Office - Supreme Court, U. S.
FILED
MAY 8 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 987 68

ARTHUR McCOY,

Petitioner,

vs.

STATE OF WEST VIRGINIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA AND BRIEF IN SUPPORT THEREOF.

ARTHUR McCOY,
Pro se.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Statement of the case	1
Points relied upon for reversal	2
Brief in support of petition	5
Statement of the case	5
Points and authorities	6
Argument	7

Table of Cases Cited.

Byars v. *United States*, 273 U. S. 28, 71 L. Ed. 520, 47 Sup. Ct. 248	7
Osborne v. *Commonwealth*, 214 Ky. 84, 282 S. W. 762	7
Ripper v. *United States*, 78 Fed. 24	7
Schenks v. *United States*, 2 F. (2d) 185	7
Simmons v. *United States*, 18 F. (2d) 581	7
State v. *Emsweller*, 78 W. Va. 214	7
State v. *Lacy*, 118 W. Va. 343	7, 10
State v. *Viquesney*, 103 W. Va. 392	6
State v. *Welch*, 69 W. Va. 547	6
United States v. *Dziadus*, 289 Fed. 837	7
Wagner v. *United States*, 8 F. (2d) 581	7

Statutes Cited.

Code of West Virginia (1923), Sec. 9, Art. 32A	9
Code of West Virginia, Chapter 61, Article 10, Section 10	1, 2, 5
Code of West Virginia (1937), Chapter 62, Article 1, Section 18	9, 10, 11
Constitution of the United States, Fourth Amendment	7
Constitution of West Virginia:	
Art. 3, Sec. 4	7
Sec. 6	7

Text Books Cited.

	Page
3 A. L. R. 1514	7
13 A. L. R. 1316	7
27 A. L. R. 709	7
39 A. L. R. 811	7
74 A. L. R. 1419	7
2 Wharton's Crim. Proc. (1918), 1337	6, 8

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 987

ARTHUR McCOY,

Petitioner,

vs.

STATE OF WEST VIRGINIA.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioner, Arthur McCoy, would respectfully represent that he is aggrieved by a final judgment of the Supreme Court of Appeals of West Virginia, rendered against him on the 6th day of February, 1940.

Statement of the Case.

The defendant was indicted at the September, 1938 term of the Intermediate Court for alleged violation of Code Chapter 61, Article 10, Section 10, which forbids the operation of a "pool room" wherein lotteries are conducted, etc. The indictment is in two counts, the first count charging that the defendant "did unlawfully and knowingly set up and promote a pool room in violation of Section 10, Article 10, Chapter 61 of the Official Code of West Virginia," etc. The second count charges that the defendant "was unlaw-

fully connected with and interested in the management and operation of a pool room in violation of Section 10, Article 10, Chapter 61 of the Official Code of West Virginia."

The defendant demurred to the indictment and each count thereof for the reason that it did not apprise him of the offense charged, nor what issue he was called upon to meet. The demurrer was overruled. Defendant firmly believes that the indictment is fatally defective for indefiniteness.

Defendant called upon the State to furnish a bill of particulars, but the request was overruled.

Upon the trial of the case the State introduced in evidence the affidavit of A. J. Morgan for a search warrant, and the search warrant itself, based upon the affidavit. It appears that the affidavit is not based upon any statement of facts, but is based upon information and belief. The evidence of Morgan upon the trial shows that he had no actual knowledge of a violation of the law. The objection of the defendant, and his motion to quash the affidavit and warrant, were overruled.

Upon the trial of the case the Intermediate Court admitted in evidence over objection of the defendant, certain "horse race" tickets and other paraphernalia confiscated as a result of the raid conducted under said search warrant.

Points Relied Upon for Reversal.

1. The court erred in overruling the demurrer to and motion to quash the indictment.

2. The court erred in overruling the request for a bill of particulars.

3. The court erred in admitting, over objection of the defendant, the affidavit of A. J. Morgan.

4. The court erred in admitting, over objection of the defendant, the search warrant issued upon the affidavit of A. J. Morgan.

5. The court erred in admitting, over objection of the defendant, the evidence confiscated as a result of the raid conducted by virtue of the said search warrant.

For these and other errors apparent upon the face of the record, your petitioner prays that he may be granted a writ of certiorari to review the judgment complained of.

Respectfully submitted,

ARTHUR McCOY,
Pro Se.

J. V. BRENNAN,
Attorney for Petitioner.